

alien's admission as a lawful permanent resident will be recorded as of the date of the alien's inspection and parole into the United States, as described in paragraph (a)(1) of this section.

(k) *Notice of denial.* When the Service denies an application to adjust status to that of lawful permanent resident based on section 586 of Public Law 106-429, the applicant will be notified of the decision in writing.

(l) *Administrative review.* An alien whose application for adjustment of status under section 586 of Public Law 106-429 is denied by the Service may appeal the decision to the Administrative Appeals Office in accordance with 8 CFR 103.3(a)(2).

(m) *Number of adjustments permitted under this section—(1) Limit.* No more than 5,000 aliens may have their status adjusted to that of a lawful permanent resident under section 586 of Public Law 106-429.

(2) *Counting procedures.* Each alien granted adjustment of status under this section will count towards the 5,000 limit. The Service will assign a tracking number, ascending chronologically by filing date, to all applications properly filed in accordance with paragraphs (b) and (g) of this section. Except as described in paragraph (m)(3) of this section, the Service will adjudicate applications in that order until it reaches 5,000 approvals under this part. Applications initially denied but pending on administrative appeal will retain their place in the queue by virtue of their tracking number, pending the Service's adjudication of the appeal.

(3) *Applications submitted with a request for the waiver of a ground of inadmissibility.* In the discretion of the Service, applications that do not require adjudication of a waiver of inadmissibility under section 212(a)(2), (a)(6)(B), (a)(6)(F), (a)(8)(A), or (a)(10)(D) of the Act may be approved and assigned numbers within the 5,000 limit before those applications that do require a waiver of inadmissibility under any of those provisions. Applications requiring a waiver of any of those provisions will be assigned a tracking number chronologically by the date of approval of the necessary waivers rather

than the date of filing of the application.

(4) *Procedures when the 5,000 limit is reached.* The Service will track the total number of adjustments and stop processing applications after the 5,000 limit has been reached. When the limit is reached, the Service will return any additional applications to applicants with a dated notice encouraging applicants to retain their application package and the notice in the event the 5,000 limit is expanded or eliminated and the alien wishes to apply again. The Service will keep an identifying chronological record of the application for purposes of processing applications under this section if the 5,000 limit subsequently is expanded or eliminated. If at the time the 5,000 limit is reached, it appears that Congress is about to pass legislation to expand or eliminate the cap, the Service retains the discretion to retain such applications and the related fees.

[67 FR 78673, Dec. 26, 2002]

**§245.22 Evidence to demonstrate an alien's physical presence in the United States on a specific date.**

(a) *Evidence.* Generally, an alien who is required to demonstrate his or her physical presence in the United States on a specific date in connection with an application to adjust status to that of an alien lawfully admitted for permanent residence should submit evidence according to this section. In cases where a more specific regulation relating to a particular adjustment of status provision has been issued in the 8 CFR, such regulation is controlling to the extent that it conflicts with this section.

(b) *The number of documents.* If no one document establishes the alien's physical presence on the required date, he or she may submit several documents establishing his or her physical presence in the United States prior to and after that date.

(c) *Service-issued documentation.* To demonstrate physical presence on a specific date, the alien may submit Service-issued documentation. Examples of acceptable Service documentation include, but are not limited to, photocopies of:

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(1) Form I-94, Arrival-Departure Record, issued upon the alien's arrival in the United States;

(2) Form I-862, Notice to Appear, issued by the Service on or before the required date;

(3) Form I-122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by the Service on or prior to the required date, placing the applicant in exclusion proceedings under section 236 of the Act (as in effect prior to April 1, 1997);

(4) Form I-221, Order to Show Cause, issued by the Service on or prior to the required date, placing the applicant in deportation proceedings under section 242 or 242A (redesignated as section 238) of the Act (as in effect prior to April 1, 1997); or

(5) Any application or petition for a benefit under the Act filed by or on behalf of the applicant on or prior to the required date that establishes his or her presence in the United States, or a fee receipt issued by the Service for such application or petition.

(d) *Government-issued documentation.* To demonstrate physical presence on the required date, the alien may submit other government documentation. Other government documentation issued by a Federal, State, or local authority must bear the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), be dated at the time of issuance, and bear a date of issuance not later than the required date. For this purpose, the term Federal, State, or local authority includes any governmental, educational, or administrative function operated by Federal, State, county, or municipal officials. Examples of such other documentation include, but are not limited to:

- (1) A state driver's license;
- (2) A state identification card;
- (3) A county or municipal hospital record;
- (4) A public college or public school transcript;
- (5) Income tax records;
- (6) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, shows that the applicant was present in the United States at the

time, and establishes that the applicant sought in his or her own behalf, or some other party sought in the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record;

(7) A certified copy of a Federal, State, or local governmental record that was created on or prior to the required date, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(8) A transcript from a private or religious school that is registered with, or approved or licensed by, appropriate State or local authorities, accredited by the State or regional accrediting body, or by the appropriate private school association, or maintains enrollment records in accordance with State or local requirements or standards. Such evidence will only be accepted to document the physical presence of an alien who was in attendance and under the age of 21 on the specific date that physical presence in the United States is required.

(e) *Copies of records.* It shall be the responsibility of the applicant to obtain and submit copies of the records of any other government agency that the applicant desires to be considered in support of his or her application. If the alien is not in possession of such a document or documents, but believes that a copy is already contained in the Service file relating to him or her, he or she may submit a statement as to the name and location of the issuing Federal, State, or local government agency, the type of document and the date on which it was issued.

(f) *Other relevant document(s) and evaluation of evidence.* The adjudicator will consider any other relevant document(s) as well as evaluate all evidence submitted, on a case-by-case basis. The Service may require an interview when necessary.

(g) *Accuracy of documentation.* In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official government record, with

records of the Service having precedence over the records of other agencies. Furthermore, determinations as to the weight to be given any particular document or item of evidence shall be solely within the discretion of the adjudicating authority.

[67 FR 78674, Dec. 26, 2002]

**PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT**

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**AUTHORITY:** 8 U.S.C. 1101, 1103, 1255a and 1255a note.

**SOURCE:** 52 FR 16208, May 1, 1987, unless otherwise noted.

**Subpart A—Immigration Reform and Control Act of 1986 (IRCA) Legalization Provisions**

**§ 245a.1 Definitions.**

As used in this chapter:

(a) *Act* means the Immigration and Nationality Act, as amended by The Immigration Reform and Control Act of 1986.

(b) *Service* means the Immigration and Naturalization Service (INS).

(c)(1) *Resided continuously* as used in section 245A(a)(2) of the Act, means that the alien shall be regarded as having resided continuously in the United States if, at the time of filing of the application for temporary resident status:

An alien who after appearing for a scheduled interview to obtain an immigrant visa at a Consulate or Embassy in Canada or Mexico but who subsequently is not issued an immigrant visa and who is paroled back into the United States, pursuant to the state-side criteria program, shall be regarded as having been granted advance parole by the Service.

(i) No single absence from the United States has exceeded forty-five (45) days, and the aggregate of all absences has not exceeded one hundred and eighty (180) days between January 1, 1982 through the date the application for temporary resident status is filed, unless the alien can establish that due to emergent reasons, his or her return to the United States could not be accomplished within the time period allowed;